

## SENATE BILL NO. 241

INTRODUCED BY B. KEENAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PERSON INTENDING TO FILE AN ADMINISTRATIVE COMPLAINT WITH THE BOARD OF PSYCHOLOGISTS OVER AN OPINION OR REPORT RENDERED IN GOOD FAITH BY A CONSULTING PSYCHOLOGIST APPOINTED BY A COURT IN THE COURSE OF A MARRIAGE DISSOLUTION CHILD CUSTODY DISPUTE MUST FIRST RECEIVE PERMISSION TO FILE THE COMPLAINT FROM THAT COURT; PROVIDING FOR JURISDICTION AND VENUE; PROVIDING FOR PAYMENT OF COSTS AND ATTORNEY FEES; AND AMENDING SECTION 37-1-308, MCA."

WHEREAS, Montana statutes concerning child custody in a dissolution of marriage provide for the appointment of a psychologist by the court for the purposes of evaluating a party or a parenting plan; and

WHEREAS, even though the psychologist must be unbiased in the evaluation of the party or plan, the psychologist's evaluation is sometimes met with hostility by a parent who is dissatisfied with the court's child custody order; and

WHEREAS, this hostility toward the consulting psychologist has led to an increase in complaints to the Board of Psychologists that the consulting psychologist appointed by the court was not impartial in evaluating a party or plan or was otherwise biased in the psychologist's relationship to the parties to the proceeding; and

WHEREAS, the possibility of becoming involved in a professional dispute before the Board of Psychologists has made psychologists less willing to serve as consulting psychologists for the courts in child custody disputes and less willing to make definitive judgments and statements that are useful to the court in those proceedings, has required more consulting psychologists to undergo lengthy investigative proceedings by the Board of Psychologists, almost all of which have turned out to be unwarranted, and has in some instances lengthened the time of child custody determinations, increasing the effects of uncertainty or hostility upon the well-being of the children and families involved in child custody disputes; and

WHEREAS, all of these factors require that disputes over a psychologist's professionalism or competency in the course of an evaluation of a party or parenting plan be evaluated by the court most familiar with the custody dispute, the orders of the court, and the psychologist's opinion and require that the law be changed to require that court to grant approval before an administrative complaint against the psychologist may

1 be filed with the Board of Psychologists.

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3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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5 **Section 1.** Section 37-1-308, MCA, is amended to read:

6 **"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions. (1)**

7 Except as provided in [section 2] and in subsections (4) and (5) of this section, a person, government, or private  
8 entity may submit a written complaint to the department charging a licensee or license applicant with a violation  
9 of this part and specifying the grounds for the complaint.

10 (2) If the department receives a written complaint or otherwise obtains information that a licensee or  
11 license applicant may have committed a violation of this part, the department may, with the concurrence of a  
12 member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable  
13 cause to believe that the licensee or license applicant has committed the violation.

14 (3) A person or private entity, but not a government entity, filing a complaint under this section in good  
15 faith is immune from suit in a civil action related to the filing or contents of the complaint.

16 (4) A person under legal custody of a county detention center or incarcerated under legal custody of  
17 the department of corrections may not file a complaint under subsection (1) against a licensed or certified  
18 provider of health care or rehabilitative services for services that were provided to the person while detained or  
19 confined in a county detention center or incarcerated under legal custody of the department of corrections unless  
20 the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

21 (5) A board member may file a complaint with the board on which the member serves or otherwise act  
22 in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the  
23 board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard  
24 has been violated."

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26 **NEW SECTION. Section 2. Disputes regarding psychological evaluations by psychologist**  
27 **appointed by court -- presumption of good faith -- leave of court required before filing of administrative**  
28 **complaint -- costs and fees. (1)** In a dispute regarding the professionalism, motives, or competency of a  
29 consulting psychologist appointed by a court pursuant to 40-4-215, the board may not take jurisdiction of or hear  
30 an administrative complaint against a psychologist and the department may not accept the filing of the

1 administrative complaint until the individual intending to file the complaint receives leave of the court pursuant  
2 to this section to file the complaint with the board.

3 (2) Before filing of the complaint, the party or other person seeking to file the complaint shall petition  
4 the court that appointed the psychologist. The court has jurisdiction over the petition, and venue must be in the  
5 county in which the parenting plan proceeding was heard.

6 (3) In a petition for leave to file an administrative complaint with the board, once jurisdiction and venue  
7 are properly established, the issue is limited to whether the psychologist complied with the rules of the board  
8 in making a report or giving an opinion to the court. A determination by the court may include a hearing and  
9 must include a review by the court of the record of the proceeding in which any opinion or report resulting from  
10 a psychological evaluation by the consulting psychologist was heard or used. The psychologist submitting the  
11 opinion or report is presumed to have acted in good faith, and the burden is upon the petitioner to demonstrate  
12 that the psychologist violated a rule of the board of psychologists in making a report or giving an opinion to the  
13 court. If the court finds that there is reasonable cause to believe that the consulting psychologist violated a rule  
14 of the board in making a report or giving an opinion to the court, the court may by order require the appointment  
15 of a different psychologist, may, upon a separate petition, rehear the matter in which the report or opinion of the  
16 psychologist was used by the court, and shall grant leave to file the administrative complaint before the board  
17 of psychologists.

18 (4) The requirements of this section do not prevent the filing of a civil action in a court of competent  
19 jurisdiction against a psychologist that includes allegations involving an opinion of a psychologist in the course  
20 of a parenting plan proceeding.

21 (5) In an administrative proceeding before the board of psychologists for which leave has been granted  
22 by a court pursuant to this section, if the board of psychologists finds that there was no violation of a rule of the  
23 board and the complaint was brought without merit, the party bringing the proceeding shall pay the reasonable  
24 costs and attorney fees of the psychologist against whom the complaint was brought. The board may enforce  
25 the requirement for the payment of costs and fees in the same manner as enforcement of an order of the board.

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27 **NEW SECTION. Section 3. Codification instruction.** [Section 2] is intended to be codified as an  
28 integral part of Title 37, chapter 17, and the provisions of Title 37, chapter 17, apply to [section 2].

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30 **NEW SECTION. Section 4. Saving clause.** [This act] does not affect rights and duties that matured,

1 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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3 NEW SECTION. **Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are  
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
5 the part remains in effect in all valid applications that are severable from the invalid applications.

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